**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**
**AND**
**HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY**

**WRIT APPEAL No.241 OF 2007**

Between:

B.Yadagiri Goud

. . .Appellant

AND

The Prohibition & Excise Superintendent,
Saroornagar, Ranga Reddy District and others

. . .Respondents

**:: JUDGMENT ::**

Counsel for the appellant : Shri B.Sai Ram Goud

**20th March, 2007**

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**Per G.S.SINGHVI, CJ**

Having failed to persuade the learned Single Judge to entertain his prayer for quashing order dated 8-1-2007 passed by Prohibition and Excise Superintendent/Functional Registrar of Cooperative Societies (respondent No.1 herein) and election notice dated 5-1-2007 issued by the Election Officer (respondent No.2), the appellant has preferred this appeal under Clause 15 of the Letters Patent.

**The Facts:**

1) Toddy Cooperative Society, Ashok Nagar, Uppal Mandal, Ranga Reddy District (hereinafter described as 'the society') was registered in the year 2000 under the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the 1964 Act') with 19 members.

2) In the elections held on 14-2-2003, respondent No.4 was declared elected as President and respondent Nos.5 to 9 were declared elected as Directors.

3) The appellant challenged the election by filing petition under Section 61 (3) of the 1964 Act. The same was registered as O.P.No.87 of 2003. By an order dated 30-10-2006, the Andhra Pradesh Cooperative Tribunal (Hyderabad) partly allowed the petition filed by the appellant in the following terms:

   i. The election dated 10-4-2003 conducted by respondent No.2 is set aside.

   ii. The elections said to have been conducted on 14-02-2003 cannot be accepted as a valid election and the same is not binding on respondent No.3.

   iii. The members of the 3rd respondent society can conduct elections themselves invoking Section 31 (2)(c) as the

3rd respondent society is not receiving any aid from the State or they can request the Election Authority to conduct election as provided in proviso to Section 31 (2) (c) of APCS Act.

iv. The fresh election for respondent No.3 society shall be conducted following due procedure under Rule 22B of APCS Rules, 1964, within 3 months from the date of the judgment.

v. There is no order as to costs.

4) During the pendency of the election petition filed by the appellant, respondent Nos.10 to 24 were inducted as members of the society in furtherance of resolution dated 12-5-2005 passed by the General Body of the society vide which the recommendations of the managing committee were approved.

5) After about two months of the decision of O.P.No.87 of 2003, the appellant and twelve others submitted representation dated 28.12.2006 to the Prohibition and Excise Superintendent, Ranga Reddy District with the prayer that the names of respondent Nos.10 to 24 be deleted from the list of members because they had been inducted by the managing committee, whose election was set aside by the Tribunal. The same was rejected vide order dated 8-1-2007. Paragraphs 7 to 10 of that order read as under:

7. The enrollment of the new membership in the society is main allegation of the petitioners. The General Body of the society in its General Body Resolution dt.12.5.2005 has recommended for enrollment of (14) new tappers under self certification under Para 9(a) of Excise (Toddy) policy guidelines for 2004-05 issued vide GO.Ms.No.767, Revenue (Ex-II) Dept., dt.29-9-2004. The meeting was attended and signed by the 14 members out of total 19 member (old) of the society. The General Body was empowered to enroll the admission of new members under the provision of the APCS Act 1964 under Section 30(2)(1).

8. The proposals for the inclusion of the new members was referred to the functional Registrar/Proh. and Excise Superintendent, Saroornagar, R.R. District for conduct of the tapping test for genuineness of the tappers included newly. This office after getting enquiry and conducting of the tapping test through SHO Uppal has confirmed the genuineness of the tappers and permitted to include the members in the TCS Ashoknagar, by following formalities under the provisions of APCS Act vide this office Cr.No.B1/220/06, dt.28.02.2006.

9. Further, one member was enrolled under incidental tapper by the managing committee in its meeting held on 30.12.2005 which is empowered to do so under Section 31-A of APCS Act 1964 and under the provisions of the Para No.4 of Excise (Toddy) Policy guidelines for 2004-05 issued vide G.O.Ms.No.767, Revenue (Ex.II) Dept., dt.29-09-2004 to maintain the 20% of the incidental tapper out of total members.

10. In view of the above, the newly enrolled membership of 14 tappers and 01 incidental tapper total 15 members are eligible to participate in the elections to be held on 22.012007. Since the enrollment of the membership is made by the managing committee and General Body of the society under the provision of APCS Act, 1964, and under the provision of the Registered bye-law of the society and under the provision of the Excise (Toddy) Policy guidelines for the year 2004-05. Further it clear that the membership was done on 12.05.2005 is bfore the judgment delivered in O.P.No.87/2003 on 30.10.2006 of Hon'ble A.P., Coop. Tribunal. Keeping in view the provision under Sec 19 (2)(A) and 19 (3) of the APCS Act of 1964 in General and bye-law No.4 and Excise (Toddy) Policy guidelines of 2004-05 in particular the managing committee and General Body of the society have taken decision to enroll new membership in the society.

6) In the meanwhile, the appellant and 12 others filed Writ Petition No.332 of 2007 with the complaint that despite the direction given by the Tribunal, the official respondents were not holding election

for the society. By an interim order dated 04.01.2007 passed in W.P.M.P.No.409 of 2007, the learned Single Judge directed the official respondents to consider the representation made by the writ petitioners and pass appropriate order within one week.

7) In compliance of the order of the Tribunal and this Court, District Collector-cum-Election Authority, Ranga Reddy District (respondent No.3) appointed Assistant Prohibition and Excise Superintendent as the Election Officer and also issued election programme. On the next day i.e. 5-1-2007, respondent No.2 issued list of voters containing the names of 34 members including respondent Nos.10 to 24. He also fixed the date of election as 22-1-2007. At that stage, the appellant filed Writ Petition No.825 of 2007 questioning the legality of orders dated 8-1-2007 passed by respondent No.1 and proceedings dated 5-1-2007 issued by respondent No.2. He pleaded that inclusion of the names of respondent Nos.10 to 24 is ultra vires the provisions of the Act and the Rules. He further pleaded that in view of order dated 30-10-2006 passed by the Tribunal, whereby election of respondent Nos. 4 to 9 had been set aside, all the actions taken by the managing committee including the induction of respondent Nos.10 to 24 as members of the society will be deemed to have become nullity. Along with the writ petition, the petitioner filed WPMP No.1037 of 2007 for issue of a direction to the official respondents to conduct elections to the society with 19 actual members. By an interim order dated 18-1-2007, the learned Single Judge suspended the process of election.

8) After hearing the counsel for the parties, the learned Single Judge dismissed the writ petition.

It is borne out from the record that during the pendency of Writ

Petition No.825 of 2007, the petitioner and 12 others filed appeal under Section 61 of the 1964 Act for deleting the names of respondent Nos.10 to 24 from the list of members and for restraining them from participating in the process of election. They also filed an application under Section 151 of the Code of Civil Procedure for interim stay. Immediately thereafter, the petitioner filed Writ Petition No.3008 of 2007 for issue of a direction to the Tribunal to dispose of the appeal filed by him and others. The same was disposed of by the learned Single Judge on 19-2-2007 directing the Tribunal to decide the pending appeal as early as possible.

Shri B. Sai Ram Goud argued that the names of respondent Nos. 10 to 24 are liable to be excluded from the list of eligible members because their induction was recommended by an illegally constituted managing committee. Learned counsel emphasized once the election of the managing committee has been set aside by the Tribunal, all the actions taken by it including the recommendation made for induction of respondent Nos.10 to 24 is liable to be annulled. He submitted that pendency of the appeal preferred by the appellant and others under Section 61 of the 1964 Act should not operate as an impediment to the entertaining of the writ petition/writ appeal because respondent Nos.10 to 24 do not have the locus to participate in the process of election.

We have considered the respective submissions of the learned counsel, but have not felt impressed. Rather, we are convinced that the learned Single Judge did not commit any error by refusing to entertain the appellant's prayer for excluding respondent Nos.10 to 24 from the process of election.

In the writ petition filed by him, the appellant did not question the legality of resolution dated

12-5-2005 passed by the General Body of the society. Therefore, respondent No.2 did not commit any illegality by refusing to entertain

representation dated 28-12-2006 made by him and 12 others and the learned Single Judge rightly refused to nullify the induction of respondent Nos.10 to 24 as members of the society.

We are further of the view that once the appellant and his associates have availed the statutory remedy by filing appeal under Section 61 of the 1964 Act, the learned Single Judge would have been fully justified in dismissing the writ petition filed by the appellant for grant of substantially similar relief.

In the result, the appeal is dismissed. However, it is made clear that if the appellant feels aggrieved by the result of the election, then he shall be free to avail remedy by filing election petition under Section 61(3) of the 1964 Act.

As a sequel to dismissal of the appeal, WAMP Nos.452 and 453 of 2007 filed by the appellant for suspending order dated 22-2-2007 passed in Writ Petition No.825 of 2007 and for issuance of a direction to the respondents to conduct elections to the society with 19 actual members, who were the members of the society as on 10-4-2003, are disposed of as infructuous.

**G.S.SINGHVI, CJ**

March 20, 2007

**C.V.NAGARJUNA REDDY, J**

svs